

PATRICK J. LEAHY, VERMONT, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
JOSEPH R. BIDEN, Jr., DELAWARE
HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
RUSSELL D. FEINGOLD, WISCONSIN
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
BENJAMIN L. CARDIN, MARYLAND
SHELDON WHITEHOUSE, RHODE ISLAND

ARLEN SPECTER, PENNSYLVANIA
ORRIN G. HATCH, UTAH
CHARLES E. GRASSLEY, IOWA
JON KYL, ARIZONA
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
SAM BROWNBACK, KANSAS
TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MICHAEL O'NEILL, *Republican Chief Counsel and Staff Director*

Honorable Michael B. Mukasey
1133 Avenue of the Americas
Suite 2200
New York, NY 10036-6710

Dear Judge Mukasey:

Unfortunately, as your nomination for Attorney General will not be on the agenda for the executive session of the Judiciary Committee this week, I think it would be useful in the intervening time for you to clarify your position on some key issues.

A question has been raised on your response to whether the President may legally authorize wiretaps which violate the Foreign Intelligence Surveillance Act, when you stated: "That would have to depend on whether what goes on outside the statute nonetheless lies within the authority of the President to defend the country."

Would you please specify your views on the scope of the President's Article II powers to disregard an explicit statutory requirement. If you believe the President can act outside the law, how do you square that belief with your statement at the hearing that "The President doesn't stand above the law[?]" How do you deal with the public concern that the rule of law is supreme and the President at times appears to put himself above the law?

In addition, I believe it is necessary for you to respond in detail as to your views on the legality and propriety of water-boarding and the appropriate scope of interrogation under U.S. law and the Geneva Convention.

As you will recall, in the hearing I commented at some length about signing statements. Would you please state what advice you would give the President when he issues a signing statement at variance with the bill presented by Congress in situations like the Patriot Act and the statutory prohibition against "cruel, inhuman, or degrading treatment or punishment" after both of these matters were negotiated between the Congress and the White House prior to the conference report being sent to the President for his signature.

Sincerely



Arlen Specter